

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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|----------------|---|------------------------|
| MICHAEL FOGLE, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Case No. 4:06CV900 RWS |
| |) | |
| ALAN BLAKE, |) | |
| |) | |
| Respondent. |) | |

MEMORANDUM AND ORDER

This matter is before me on the petition for writ of habeas corpus filed by petitioner Michael Fogle. I referred this matter to United States Magistrate Judge Audrey G. Fleissig for a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b). On November 29, 2006, Judge Fleissig filed her recommendation that petitioner's habeas petition should be dismissed without prejudice for failure to exhaust state court remedies.

Petitioner objected to the exhaustion analysis in Judge Fleissig's Report and Recommendation. I have conducted a de novo review of the entire file, including all matters relevant to the petition. After careful consideration, I will adopt and sustain the thorough reasoning of Magistrate Judge Fleissig and will dismiss petitioner's habeas petition without prejudice for the reasons stated in the Report and Recommendation dated November 29, 2006. Because Judge Fleissig correctly concluded that petitioner failed to exhaust his state court remedies, petitioner's objections to the Report and

Recommendation are overruled.

I have also considered whether to issue a certificate of appealability. To grant a certificate of appealability, the Court must find a substantial showing of the denial of a federal constitutional right. See Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997). A substantial showing is a showing that issues are debatable among reasonable jurists, a Court could resolve the issues differently, or the issues deserve further proceedings. Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997) (citing Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994)). Because petitioner has not made such a showing in this case, I will not issue a certificate of appealability. Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation filed on November 29, 2006 is adopted and sustained in its entirety.

IT IS FURTHER ORDERED that Petitioner Michael Fogle's Petition for Writ of Habeas Corpus is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

A separate Judgment in accordance with this Memorandum and Order is entered this same date.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 20th day of December, 2006.

